

Remarks

An Information Disclosure Statement listing the references on a PTO-1449 form and a copy of each of the references was properly submitted on May 10, 2001. Applicant requests that the initialed form indicating that each of the references listed has been considered be included with the next Office Action or the Notice of Allowance. An additional copy of the papers submitted on May 10, 2001 along with copies of all cited references is included with the present Response for the convenience of the Examiner. Applicant has requested a copy of the initialed PTO-1449 form in the last two Responses; however, one has not been returned in the last two Office Actions.

Claims 1-30, 32, and 34-61 are pending in the application and stand rejected. No claims have been amended, and no new claims have been added. Applicant respectfully requests reexamination and reconsideration of the case in light of the following remarks. Each of the rejections levied in the Office Action is addressed individually below.

I. Rejections under 35 U.S.C. § 103. Claims 1-30, 32, 34, and 54-61 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Lewis (U.S. Patent 6,620,116). The Examiner states that the '116 patent teaches the application of graded sequential compression to treat a patient suffering from a disease characterized by low blood flow. Regardless of whether Lewis teaches graded sequential compression and maximum pressure ranges, Applicant submits herewith a Declaration signed by Professor Roger D. Kamm for the purpose of removing the '116 patent from consideration by the Examiner. The patent application resulting in the '116 patent was filed on December 8, 2000 and published as US 2002/0173735 on November 21, 2002. The '116 patent issued on September 16, 2003. Since the present application was filed on March 23, 2001 (*i.e.*, before the publication or issuance of the '116 patent), the '116 patent is only prior art under 35 U.S.C. § 102(e). Professor Kamm in his Declaration states that the claimed invention was conceived before December 8, 2000, the filing date of the '116 patent, and that the invention was developed with due diligence from the conception until the filing of the present application on March 23, 2001. As evidence of this fact, Exhibit A of the Declaration is the completed disclosure form submitted by Professor Kamm and Dr. Gertler to the


Technology Licensing Office at the Massachusetts Institute of Technology. The completed disclosure form describes the claimed invention and bears a date before December 8, 2000; however, the date has been redacted. Therefore, Applicant submits that the claimed invention was conceived before the filing date of the '116 patent and requests that the reference be removed from consideration by the Examiner.

The Examiner has also rejected under 35 U.S.C. § 103 claims 35-39, 40, 44, 47, 49, and 51-53 as being unpatentable over Zheng (US 5,997, 540) in view of the '116 patent by Lewis and claims 35, 41-46, 48, and 50 as being unpatentable over Cariapa (US 5,437,610) in view of Lewis. Without the teachings of specific maximum pressures and graded sequential compression by the '116 patent, the Examiner has not established a *prima facie* case of obviousness, and therefore, the Applicant requests that these rejections be removed.

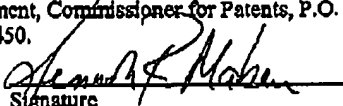
In view of the forgoing amendments and arguments, Applicant respectfully submits that the present case is now in condition for allowance. A Notice to that effect is requested.

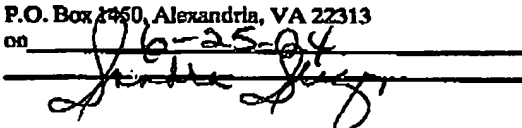
Please charge any fees that may be required for the processing of this Response, or credit any overpayments, to our Deposit Account No. 03-1721.

Respectfully submitted,


C. Hunter Baker, M.D., Ph.D.
Registration Number: 46,533

Choate, Hall & Stewart
Exchange Place
53 State Street
Boston, MA 02109
(617) 248-5000
Date: June 25, 2004

Certificate of Mailing	
I certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as First Class Mail in an envelope addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.	
June 25, 2004	
Date	Signature
Kenneth R. Mahen	
Typed or Printed Name of person signing certificate	

CERTIFICATE OF FACSIMILE TRANSMISSION
PURSUANT TO 1096 OG 30-31
I hereby certify that this paper is being facsimile transmitted to the Commissioner For Patents, P.O. Box 1450, Alexandria, VA 22313 on 6-25-04


3 of 3